

RULE 25. APPEALS (Effective 1/1/69: Rev. Effective 12/17/97)

(a) Within 10 days after notice, by the Air Pollution Control Officer, of denial or conditional approval of an Authority to Construct, Permit to Operate, Permit to Sell or Rent, or renewal of a Permit to Operate with new or modified conditions, or Emission Reduction Credit (ERC) Certificate, the applicant may petition the Hearing Board, in writing, for a public hearing. Such request shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury. The Hearing Board, after notice and a public hearing held within 30 days after filing the petition, may sustain, reverse or modify the action of the Air Pollution Control Officer. Such order may be made subject to specified conditions.

(b) Within 10 days of any decision or action pertaining to the issuance of an Authority to Construct, Permit to Operate, temporary authorization, Permit to Sell or Rent, or renewal of a Permit to Operate with new or modified conditions, or Emission Reduction Credit Certificate, an aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in connection with the issuance of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, may request the Hearing Board to determine whether the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, was properly issued. A request to the Hearing Board shall be made by filing of a petition in accordance with the Rules and Regulations of the Hearing Board and payment of fees provided for in Rule 42 of the Rules and Regulations of the Air Pollution Control District. The request shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury. A copy of such request shall be served on the holder of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, and the Air Pollution Control Officer no later than the day the request is filed with the Hearing Board. Within 30 days of the request, the Hearing Board shall hold a noticed public hearing and render a decision on whether the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, was properly issued in accordance with District Rules and Regulations.

(c) (1) An aggrieved person who has filed a petition pursuant to Section (b) of this Rule may request the Hearing Board to stay the effect of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, pending a decision of the Hearing Board on the petition. Any such request shall be in writing, shall state with reasonable particularity the grounds in support of the request and shall be signed under penalty of perjury. A copy of the Petition and request for stay shall be served personally on the holder of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, and the Air Pollution Control Officer on the same day the request for stay is filed with the Hearing Board, but prior to the time the request is filed with the Hearing Board; provided, however, that service of the request on a holder of an Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, who does not maintain a fixed place of business within the District may be accomplished by mail. Proof of service on the holder of an Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, must accompany any request for a stay at the time such request is filed with the Hearing Board.

(2) A request for stay served and filed pursuant to Subsection (1) of Section (c) shall be heard, notice requirements permitting, at the next meeting of the Hearing Board at which time the Hearing Board shall determine whether the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, should be stayed until the final decision of the Hearing Board on the propriety of the issuance of the permit is rendered. If the notice requirements cannot be met for the next meeting of the Hearing Board, the stay request shall be heard at the following meeting of the Hearing Board. The person requesting the stay, the holder of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, and the Air Pollution Control Officer shall be given an opportunity to present evidence and arguments on the request for stay.

A request for stay shall have priority over other matters on the Hearing Board calendar.

(3) The Hearing Board shall stay the effect of an Authority to Construct or permit or temporary authorization pending final decision by the Hearing Board only if the Hearing Board finds that denial of the stay would likely result in the great or irreparable injury to an aggrieved person or the public. The decision of the Hearing Board on the stay shall be served by the Clerk of the Hearing Board immediately on all parties and the Air Pollution Control Officer.

(d) With respect to an Authority to Construct or permit or temporary authorization for a modification of an existing permitted operation, any appeal or stay provided for in this Rule shall apply only to the modification and not to the existing operation.

(e) Not later than three business days after receipt by the Air Pollution Control Officer of an appeal pursuant to Section (b) of this Rule or a request for stay pursuant to Section (c) of this Rule, the Air Pollution Control Officer or his designee shall attempt to schedule a meeting with the appellant and the permit holder to resolve the issues identified in the appeal or request for stay. If there is a resolution of the issues by the parties, the matter before the Hearing Board shall be withdrawn or dismissed. If all the issues are not resolved at the meeting, the District shall file a report with the Hearing Board detailing the resolved and unresolved issues and the District position on the unresolved issues.

(f) **EXEMPTIONS**

The provisions of this Rule 25 do not apply to:

(1) Annual renewal of permits or transfer of ownership provided permit conditions are not modified or revised. In the event permit conditions are modified or revised at the time of renewal, the provisions of this Rule 25 shall apply only to the modification or revision.

(2) A Permit to Operate required solely because of a change in permit exemptions stated in Rule 11 provided the article, machine, equipment or contrivance was installed at the time the applicable revisions to Rule 11 became effective and provided no modifications to the equipment are necessary to comply with District Rules and Regulations or applicable state and federal law. In the event a modification is necessary, the provisions of this Rule 25 shall apply to the modification.

(g) **DEFINITIONS**

For the purposes of this rule:

(1) **"Aggrieved Person"** means any person, including a person or group representing the interest of the public in air quality, who alleges that the issuance of an Authority to Construct or permit or temporary authorization will infringe upon or deny such person's legal rights or the legal rights of the general public in respect to air quality.

(2) **"Appeared, Submitted Written Testimony, or Otherwise Participated"** means communicating specific substantive or procedural air pollution issues to the Air Pollution Control District staff members who are responsible for Authority to Construct or permit issuance. Participation, wherever possible, should be documented in writing by the participant. The term does not include merely expressing general interest or concern or communicating orally, whether by telephone or otherwise, with Air Pollution Control District staff members who are not directly responsible for issuance of the Authority to Construct or permit or temporary authorization.